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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/772,705 | 02/05/2004 | Thomas Roy Richard | 3689 | 5619 |

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EXAMINER

KATCHEVES, BASIL S

ART UNIT PAPER NUMBER

3635

DATE MAILED: 03/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/772,705

Applicant(s)

RICHARD ET AL.

Examiner

Basil Katcheves

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 102

Claims 1-12 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,845,432 to Knudson as in the previous office action for disclosing a gutter clip.

Claim Rejections - 35 USC § 103

Claims 13-15, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,845,432 to Knudson as in the previous office action for disclosing a gutter clip.

Regarding claim 19, Knudson discloses an installation of a bracket for mounting a cover to a gutter, the bracket having a juncture (fig. 1: 43), a lifting strut (32) attached to the juncture, a stabilizing strut (39) attached to the juncture, and a bracing strut (65) attached to the juncture. However, Knudson does not disclose the distal lower end of the bracing strut as contacting the bottom of the gutter. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Knudson by extending the bracing strut farther downward far enough to contact the bottom of the gutter in order to increase the contacted surface area and therefore provide a stronger support for the gutter.

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Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,845,432 to Knudson in view of U.S. Patent No. 5,570,860 to Schoenherr as in the previous office action.

Response to Arguments

Applicant's arguments filed 1/27/05 have been fully considered but they are not persuasive. Applicant argues the use of the Knudson reference against claims 1-18 as not containing the claimed relationship between the gutter and bracket components. However, applicant should note that the gutter is not claimed in these claims and only the subcombination bracket is being examined. Therefore, the prior art meets the structural limitations of the bracket, itself. Applicant also argues the use of the components shown in the prior art against those of the instant application. Applicant should note that the structure of the prior art meets the structural claim limitations of the instant application as claimed. Regarding claim 19, applicant states that the instant application requires no fastening elements as opposed to the prior art. Applicant should note that as claimed, the prior art meets the limitations of the instant application regardless of the means of mounting to the structure, as the means is not claimed. Applicant argues the process of forming the bracket is not met by the prior art. Applicant should note that the structure of the claims is being examined and not the method of making.

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Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Basil Katcheves whose telephone number is (703) 306-0232. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman, can be reached at (703) 308-0832.

BK 



3/7/05